

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **APR 18 2014**

Office: TEXAS SERVICE CENTER FILE:

[Redacted]

IN RE: Petitioner:
Beneficiary:

[Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician researcher. At the time of filing, the petitioner was working as a fellow in the Division of Pulmonary, Allergy, and Critical Care Medicine at the [REDACTED]. Subsequently, on July 1, 2013, the petitioner began his third year of fellowship training in the Section of Pulmonary and Critical Care Medicine at [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits an August 17, 2013 letter generally reiterating the “evidence [that] was [previously] submitted showing that [the petitioner] has made significant contributions to the field, that his work has impacted the national interest, especially his research work, and that he has distinguished himself from his peers, thereby justifying the waiver of labor certification.” The petitioner does not allege any error on the part of the director or point to any evidence that the director failed to consider.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (NYS DOT), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The petitioner has established that his work as a physician researcher is in an area of substantial intrinsic merit. With regard to the second prong of the national interest waiver test, the director found that the proposed benefits of the petitioner’s work as a pulmonary and critical care researcher would not be national in scope. The petitioner, however, performs research involving Idiopathic Pulmonary Fibrosis (IPF). Improving diagnostic and treatment methods for IPF would substantially benefit the U.S. healthcare system. As the documentation submitted by the petitioner is sufficient to demonstrate that the proposed benefits of his pulmonary research are national in scope, the director’s finding is withdrawn. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must establish his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require

future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *NYSDOT* at 220. At issue is whether this petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on January 15, 2013. In addition to documentation of his patent applications, publications, conference presentations, and medical credentials, the petitioner submitted reference letters discussing his activities in the field.

The director denied the petition on August 7, 2013. The director acknowledged the petitioner's submission of reference letters, but determined that they failed to show that his past accomplishments were sufficient to demonstrate eligibility for the national interest waiver. In addition, the director found that the reference letters focused on the potential future impact of the petitioner's work rather than how his research efforts had already affected the field. The director also pointed to a lack of citation of the petitioner's work by others in the field. The director therefore concluded that the petitioner failed to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner states:

The original application as well as the response to the request for evidence documented numerous publications and presentations in major national forums. Furthermore, [the petitioner's] work has been extensively cited as was also documented.

Also, his patent applications have received national recognition and have been cited –

In 2010, an invention disclosure that he co-authored was selected out of a pool of 225 invention disclosures, to be submitted for a patent application by the [redacted] to the United States Patent and Trademark Office (USPTO). This patent application is titled [redacted] (Publication number: [redacted])

A second patent application titled “[REDACTED]” has been filed to the World Intellectual Property Organization (WIPO). (Publication number: [REDACTED] International Application number: [REDACTED])

The petitioner asserts that his “work has been extensively cited,” but the submitted evidence shows only one cite to his patent application entitled “[REDACTED]” by his colleagues at the [REDACTED]. There is no documentary evidence to support the petitioner’s extensive citation claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Moreover, the submitted citation is a self-cite by the petitioner’s coauthor Dr. [REDACTED]. Self-citation is a normal, expected practice. Self-citation cannot, however, demonstrate the response of independent researchers. The petitioner has not established that the level of independent citation of his work is indicative of his influence on the field as a whole.

The petitioner further states: “The fact that [the petitioner] serves in a lead role at [REDACTED] . . . should be also deemed relevant to his significant national reputation, as [REDACTED] is of course one of the top medical institutions in the entire country.” The petitioner’s July 2013 fellowship appointment at [REDACTED] however, post-dates the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Accordingly, the petitioner’s July 2013 [REDACTED] fellowship appointment cannot be considered as evidence to establish his eligibility at the time of filing.

In addition, the petitioner states: “The testimonial[s] submitted documented [the petitioner’s] outstanding clinical reputation as well as the practical importance of his research work to the medical community.”

Dr. [REDACTED] Professor of Medicine, and Chief of the Division of Pulmonary, Allergy and Critical Care Medicine, [REDACTED] stated:

[The petitioner] discovered and is a co-inventor of [REDACTED] and evaluation whose invention relates to the discovery of a panel of [REDACTED] and genes in the peripheral blood that could be used to diagnose IPF and distinguish this condition, for the first time, from other lung ailments. His invention also relates to the identification of [REDACTED] associated with IPF disease progression that could be used to monitor the disease over time. This milestone invention received an application publication,

the step prior to being awarded a patent, by the U.S. Patent and Trademark Office under

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Moreover, [the petitioner] has submitted a second patent application to the U.S. Patent and Trademark Office for his discovery and invention on [redacted] where he discovered the first [redacted] patients destined for premature death and invented a [redacted] based on the expression of three genes from the identified gene expression signature. Implications of predicting mortality in IPF are significant because risk stratification based on a blood test will have valuable and inexpensive applications in determining which patients should be referred to pre-transplantation assessments and to prioritize organ allocations to those who have been evaluated and are destined for premature death, particularly given the ongoing shortage of organs available for transplantation.

Dr. [redacted] points to two patent applications that the petitioner coauthored with Dr. [redacted] Dr. [redacted] Dr. [redacted] and others, but there is no documentary evidence showing that a patent has been granted for either of the preceding patent applications. Further, although issuance of a patent recognizes the originality of an idea, it does not demonstrate that the petitioner has influenced the field as a whole through his development of the innovation. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *NYS DOT* at 221, n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* In this instance, there is no documentary evidence showing that the petitioner's invention has been implemented by medical centers as a diagnostic or evaluation technique for those afflicted with IPF, or that his work has otherwise influenced the field as a whole.

Dr. [redacted] further stated:

Currently, [the petitioner] is an expert pulmonary and critical care researcher conducting innovative research studies funded by ten grants from the world-renowned National Institutes of Health (NIH), an agency of the U.S. Department of Health and Human Services and the primary agency of the U.S. government responsible for biomedical and health-related research. The NIH was responsible for 28%, about \$26.4 billion, of the total biomedical research funding spent annually in the U.S. as of 2003. A research scientist having his research projects funded by many grants from the NIH is evidence that the scientist is nationally regarded as a leading scientist whose studies have had a significant impact on the biomedical research community. Having the majority of [the petitioner's] research studies funded by the NIH evinces the reputation that he has garnered by the scientific community, including the NIH, as an outstanding researcher in his field.

Dr. [redacted] comments on the petitioner's participation in research projects funded by NIH grants awarded to the petitioner's superiors at the [redacted]. A substantial amount of medical research is funded by grants from a variety of public and private sources. Dr. [redacted] does

not specify whether the petitioner was a principal investigator on any research studies funded by the NIH. The past achievements of the principal investigator are a factor in grant proposals because the funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, the ability to secure funding for a research project does not differentiate the petitioner from other capable medical researchers, or demonstrate that his work has already influenced the field as a whole.

Dr. [REDACTED] continued:

At the [REDACTED] [the petitioner] supervises and instructs new physicians and medical students in the performance of complex pulmonary and critical care procedures. [The petitioner's] practical teaching approach has affected each physician whom he has instructed. Over the course of their careers, these physicians move throughout the U.S., and the lessons taught by [the petitioner] beneficially affect their patients.

Dr. [REDACTED] comments on the petitioner's supervision and instruction of physicians and medical students at the [REDACTED] but there is no documentary evidence showing that his teaching methods are being utilized at a number of medical centers or that his instructional lessons have otherwise affected the pulmonary and critical care fields as a whole.

Dr. [REDACTED] Professor of Medicine, and Director of the Fellowship Training Program, Division of Pulmonary, Allergy and Critical Care Medicine, [REDACTED] stated:

[The petitioner] is an outstanding pulmonary and critical care specialist with expertise in the performance of a variety of emergency, life-saving diagnostic and therapeutic procedures. He is one of the few physicians in our specialty with expertise in the placement of central venous catheters using a long-axis approach under ultrasonography. Compared with standard ultrasound guidance, this technique significantly improves the success rate and safety of central venous catheterization.

* * *

Although it has become increasingly difficult for internists to become proficient in the sub-specialties, [the petitioner] is one of the few who has mastered the sub-specialties of both Pulmonary and Critical Care Medicine.

[The petitioner's] expertise in Critical Care Medicine includes respiratory failure, heart failure and other cardiovascular diseases, severe infections neurosurgical critical care, and end of life care. As a leading Pulmonologist, [the petitioner] diagnoses and treats respiratory diseases, including Cystic Fibrosis, Chronic Obstructive Pulmonary Disease (COPD), pneumonia acute respiratory distress syndrome (ARDS), interstitial lung disease, lung cancer, Pulmonary hypertension and sarcoidosis. . . . Few physicians are able to specialize in Pulmonary Medicine. [The petitioner] is thus one of the rare few.

* * *

[The petitioner's] extensive background allows him to better diagnose and treat cases requiring the attention of multiple specialists. As a pulmonologist and critical care physician at the top of his field, [the petitioner's] ability to diagnose advanced complications is second to none, and his clinical skills are outstanding.

Dr. [redacted] points to the petitioner's skills and knowledge in various aspects of pulmonary and critical care medicine, but special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT* at 221. Any claim that the petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. In addition, Dr. [redacted] fails to provide specific examples of how the petitioner's past work has already influenced the field as a whole.

Dr. [redacted] Endowed Chair for Pulmonary Research, Division of Pulmonary, Allergy and Critical Care Medicine, [redacted] stated:

[The petitioner] was the first scientist to identify diagnostic [redacted] profiles differentiating IPE patients from healthy individuals, [a] discovery that was presented at the 2009 [redacted]. He was also the first scientist to find [redacted] of [redacted] patients indicating premature mortality. He invented the first [redacted] outcome gene chip in IPE based on the expression of three genes from the identified gene expression profile; findings that were presented at the 2011 [redacted]

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[The petitioner] was also the first researcher to demonstrate the value of [redacted] at different time points for [redacted] progression monitoring. His pioneering finding may potentially replace the current modality of monitoring IPE progression by the use of periodic chest CT scans which exposes the patients to continuous radiation exposure and is extremely costly. This innovative finding was presented at the 2009 Joint [redacted] and published in a review article in *Biomarkers in Medicine*.

* * *

He has had his reviews and research findings published in leading high-impact journals including *American Journal of Respiratory and Critical Care Medicine*, *Cancer Research*, *Biomarkers in Medicine*, and *UpToDate*. He has been invited to present his findings at the 2009 and 2011 [redacted], the [redacted]

[REDACTED] and the 2011 [REDACTED]

Dr. [REDACTED] comments on the petitioner's published and presented work, but there is no documentary evidence showing that the petitioner's articles and abstracts are frequently cited by independent researchers or have otherwise affected the field as a whole. Although the petitioner's research findings have value, any research must be original and likely to present some benefit if it is to receive funding and attention from the medical or scientific community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every physician who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement.

With regard to the petitioner's presentations at medical conferences such as those coordinated by the American Thoracic Society, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, educational institutions, healthcare organizations, employers, and government agencies. Although presentation of the petitioner's work demonstrates that his research findings were shared with others and may be acknowledged as original based on their selection to be presented, there is no documentary evidence showing his work has impacted the field as a whole.

Dr. [REDACTED] further stated:

[The petitioner's] superior skills as a critical care specialist are particularly important to the nation in light of the unprecedented shortage of intensivists in intensive care units nationwide. The Committee on Manpower for Pulmonary and Critical Care Societies has forecasted that the demand for Critical Care services in the United States will exceed the capabilities of the current delivery system. Today, intensivists provide care in only 29% of ICUs.

Dr. [REDACTED] points to "the unprecedented shortage of intensivists in intensive care units" in the United States. The unavailability of qualified U.S. workers or the amelioration of local labor shortages, however, are not considerations in national interest waiver determinations because the labor certification process is already in place to address such shortages. *NYSDOT* at 218. Again, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *Id.* at 221. With regard to physicians working in underserved areas, Section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (November 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians in medically underserved areas or Veterans Administration facilities. This exception is limited to physicians who follow specific requirements set forth in the regulation at 8 C.F.R. § 204.12. The petitioner, however, does not claim eligibility under section 203(b)(2)(B)(ii) of the Act.

Dr. [REDACTED] a Professor of Medicine at the [REDACTED] who coauthored two patent applications with the petitioner, stated:

As a pulmonologist and critical care physician-scientist, [the petitioner] directly affects the daily care of patients. Impressively, he played a significant role in the discovery of a panel of [REDACTED] that may be used to diagnose Idiopathic Pulmonary Fibrosis and distinguish this condition from other lung ailments. This has the potential to revolutionize the medical community's ability to diagnose, predict mortality, and monitor progression of this lung disease that has no established cause nor any proven treatments to improve survival other than lung transplantation.

* * *

Furthermore, [the petitioner] is nationally recognized for his innovative research on "Gene expression and outcome profile of idiopathic Pulmonary Fibrosis patient subgroups based on [REDACTED] scores' where he was the first scientist to identify gene expression signature associated with increased [REDACTED] in Idiopathic Pulmonary Fibrosis (IPF) that may lead to the development of drugs that could potentially treat shortness of breath in IPF and to be the pillar to develop treatments focusing on patients' quality of life. This groundbreaking finding was presented at the American Thoracic Society International Conference.

[The petitioner's] research studies have been published in prominent high-impact journals including the *American Journal of Respiratory and Critical Care Medicine*, *Cancer Research*, and *Biomarkers in Medicine*; he currently has manuscripts under peer review in *Science Translational Medicine* and *UpToDate*. He was also invited to present his findings at national and international conferences including the 2009 and 2011 American Thoracic Society Annual International Conference, the [REDACTED]

Dr. [REDACTED] comments that the petitioner's discovery "may be used to diagnose" and distinguish IPF from other lung ailments and that it "has the potential to revolutionize the medical community's ability to diagnose, predict mortality, and monitor progression of this lung disease." In addition, Dr. [REDACTED] asserts that the petitioner's identification of the gene expression signature associated with increased [REDACTED] in IPF "may lead to the development of drugs that could potentially treat shortness of breath in IPF." The submitted evidence, however, does not show that petitioner's work has yet been utilized in the field as a method for IPF medical diagnosis or drug treatment. Speculation about the possible future impact of the petitioner's work is not evidence, and cannot establish eligibility for the third prong of the national interest waiver test. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Dr. [REDACTED] also mentions that the petitioner's work has been published in various journals and presented at national and international medical conferences. There is no documentary evidence

showing, however, that the petitioner's work has been frequently cited by independent researchers or that his findings have otherwise affected the field as a whole.

Dr. [REDACTED] Professor of Medicine, and Chief, Division of Pulmonary and Critical Care Medicine, [REDACTED] stated:

In recognition of his respected status in his field, [the petitioner] has been given important roles at prominent medical institutions. He is a pulmonologist and critical care specialist, educator, and research scientist at the [REDACTED] Division of Pulmonary, Allergy and Critical Care Medicine at the [REDACTED]. He is also a member of the [REDACTED] Pulmonary, Allergy and Critical Care Medicine Fellowship Committee. During this appointment, [the petitioner] has received numerous accolades and awards, including the University of Pittsburgh Medical Center, Presbyterian-Shadyside Intern of the Year Award, Junior Resident of the Year Award, and Senior Resident of the Year Award in recognition of his outstanding clinical expertise in the field. . . . [The petitioner] was also recently selected as one of the top Pittsburgh Internal Medicine specialists by the International Association of Internists.

Dr. [REDACTED] points to the petitioner's "important roles" at the University of Pittsburgh, but it is not unusual that a medical institution would select a well-qualified applicant for a given position. Selection for a medical training fellowship is not intrinsic proof of eligibility for the national interest waiver. In addition, Dr. Sznajder comments on the petitioner's local and institutional awards at the University of Pittsburgh. Occupational experience and recognition for achievements are elements that can contribute toward a finding of exceptional ability. See 8 C.F.R. § 204.5(k)(3)(ii)(B) and (F), respectively. Exceptional ability, in turn, is not a self-evident ground for the national interest waiver. See section 203(b)(2)(A) of the Act. The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given individual seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. Particularly significant awards may serve as evidence of the petitioner's impact and influence on his field, but the petitioner has failed to demonstrate that the awards he received (which are limited to those in the training phase of their medical career) are indicative of his influence on the field as a whole.

Dr. Ivan Rosas, Assistant Professor of Medicine, Harvard Medical School, stated:

Evidence of [the petitioner's] outstanding reputation as a nationally-respected researcher can be found in the publications, presentations, and his being awarded a patent application publication for his invention in IPF diagnosis. His research studies and reviews have been published in *Biomarkers in Medicine*, *Cancer Research*, *UpToDate* and *American Journal of*

Respiratory and Critical Care Medicine with a very significant contribution, relating the predictive potential of peripheral blood mononuclear cells in IPF, under review by the renowned journal *Science Translational Medicine*. Moreover, he received invitations to present his research findings at prominent medical conferences including the American Thoracic Society International Conference in 2009 and 2011, the Pulmonary Fibrosis Conference, and the

In the same manner as previous references, Dr. mentions the petitioner's patent application for the IPF diagnosis invention, journal publications, and conference presentations, but there is no documentary evidence showing that the petitioner's work has been frequently cited by independent researchers or has otherwise influenced the field as a whole.

Frequent citation by others is not the only means by which to show the petitioner's impact on his field. Independent reference letters can play a significant role in this respect. Here, the letters submitted by the petitioner discuss the importance of his work and its potential value. These claims support the finding that the petitioner seeks employment in an area of substantial intrinsic merit and that the proposed benefits of his work have a national impact. However, as it relates to the third prong of *NYS DOT*, the reference letters fail to establish the depth or extent of petitioner's influence on the field as a whole. Descriptions of the petitioner's novel findings and speculation about their potential future impact are not sufficient to establish that the petitioner will serve the national interest to a substantially greater degree than other similarly qualified workers.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by a petitioner in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a physician researcher who has influenced the field as a whole.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. Although the petitioner need not demonstrate notoriety on the scale of national acclaim, the petitioner must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.” *NYSDOT* at 219, n.6. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.